



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,759	07/30/2003	Glenn Roy	02105.002355	6813
61146	7590	07/19/2006	EXAMINER	
PEPSICO, INC. c/o GOODWIN PROCTER LLP EXCHANGE PLACE BOSTON, MA 02109			PEARSE, ADEPEJU OMOLOLA	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/629,759

Applicant(s)

ROY ET AL.

Examiner

Adepeju Pearse

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 1761

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-13 and 15-25 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 16-17 and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Tood, Jr (US Pat. No. 5,079,016). With regard to claims 1 and 16-17, Tood discloses color stabilized synthetic and natural carotenoid compositions comprising a natural antioxidant such as rosemary extract (col 2 lines 40-49).
4. With regard to claim 2, Tood discloses synthetic carotenoids including beta-carotene, beta-apo-8-carotenal, etc as instantly claimed.
5. With regard to claims 20-21, Tood discloses a method of stabilizing a beverage such as tomato juice utilizing rosemary extract (example 7).

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claims 3-13, 15, 18-19 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tood, Jr. (US Pat. No. 5,079,016) in view of Onishi et al (US Pat. No. 6,379,729) and Lenoble et al (US Pat. No. 5,908,650).
8. With regard to claims 3 and 4, Tood failed to disclose the amount of synthetic color present. However, Onishi et al teach a water soluble-color stabilized food such as fruit juice drinks, carbonated drinks etc (col 2 lines 50-57) containing water-soluble color selected from the group consisting of synthetic colors such as coal-tar color, natural colors such as anthocyanin color etc (abstract). Onishi et al teach weight % of 0.001% (10ppm) of FD & C Yellow #5 in an experimental example (col 5 lines 2-3) and 0.0005% of FD & C Blue #1 (5ppm) (col 6 line 1). These amounts are within applicant's range. It would be obvious to expect a sufficient amount of color impartation identical to applicants' in a food product.
9. With regard to claims 5-7, Tood failed to disclose the amount of the botanical color stabilizer. Based on the broad range of the amount, it would be an experimental result variable to arrive at a suitable amount in order to provide an effective color stability. Such amount of color stabilizer would account for the particular color desired and preserved.
10. With regard to claim 8, Tood discloses rosemary extract as a natural antioxidant to prevent color fading in both natural and synthetic colors but failed to disclose caffeic acid derivatives and rosmarinic acid as botanically derived color stabilizers. Lenoble et al teach that

Art Unit: 1761

caffeic acid derivative and rosmarinic acid are useful as pigment improving agents for natural pigments (col 3 lines 24-26). Applicant has recited that the extracts and caffeic and rosmarinic acids contain the C6-C3 phenylpropenoic carbonyl compound and therefore can be utilized as obvious equivalents for the same function of color stabilization. Therefore, it would be obvious to one of ordinary skill in the art to modify Tood by incorporating these acids as pigment-improving agents.

11. With regard to claims 9-15, Tood failed to disclose other C6-C3 phenylpropenoic carbonyl compounds. However, Lenoble et al teach that plant sources useful include any food and GRAS material which contains appreciable amounts of flavonoid glycuronides, flavonoid glycosides or caffeic acid derivatives (col 4 lines 17-20), a variety of C6-C3 phenylpropenoic compounds including flavones, luteolin, apigenin, quercetin, kaemferol, gossypetin, etc are also disclosed in (col 6 lines 12-3%. It would have been obvious to one of ordinary skill in the art to modify Tood by incorporating these materials to improve color retention.

12. With regard to claim 18, Tood discloses rosemary extract but failed to disclose other extracts that can be utilized. Lenoble et al teach that the pigment-improving agents are naturally occurring plant extracts (col 3 lines 1-5), Lenoble et al also teach that extracts can be made from the materials in tables I and II, such as chamomile and rosemary extract (col 6 lines 66-67). It would have been obvious to one of ordinary skill in the art to modify Tood by incorporating these plant extracts because they have no known toxic or carcinogenic effects (col 3 lines 1-5) and one would simply be substituting one conventional extract for another for the same function.

13. With regard to claim 19, Tood failed to disclose incorporating sorbic acid, fumaric acid, maleic acid or aconitic acid into the coloring composition. However, Onishi et al disclose sorbic

Art Unit: 1761

acid and/or its salt incorporated into a food colored with natural and synthetic dyes exhibited a higher stabilizing effect (col 2 lines 39-42). It would be obvious to one of ordinary skill in the art to incorporate sorbic acid in order to have a higher stabilizing effect.

14. With regard to claims 22-25, Tood failed to disclose the FD & C synthetic dyes. However, Onishi et al disclosed a variety of coal tar dyes including examples of coal tar color including acid red 51 (FD &C Red #3), acid yellow 23 (FD & C Yellow #5), food yellow 3 (FD & C Yellow #6), acid red 92 (D & C Red #28), food blue 2 (FD & C blue #1), acid blue 74 (FD & C Blue //2), etc (col 3 lines 52-56). Lenoble et al teach a variety of plant extracts suitable in the pigment-improving agents. Absent any clear, convincing and/or arguments to the contrary, one skilled in the art would be motivated to use any of the synthetic dyes because of their well known function of being safe colorants or the plant extracts because they have no toxic or carcinogenic effects and are obtained relatively easy.

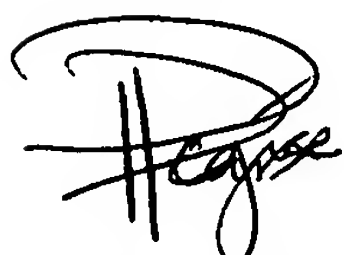
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Peju Pearse

  
MATTHEW A. GATO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700